

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

C/M

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	:	
UNITED STATES OF AMERICA,	:	
	:	<u>MEMORANDUM DECISION AND</u>
- against -	:	<u>ORDER</u>
	:	
SHENG MIAO XIA,	:	18-cr-408-5 (BMC)
	:	
Defendant.	:	
	:	
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COGAN, District Judge.

Defendant *pro se* Sheng Miao Xia seeks compassionate release or a reduction of sentence under 18 U.S.C. § 3582(c)(1)(A)(i). I sentenced him upon his guilty plea principally to 12 months plus 1 day of incarceration for conspiring to traffic in counterfeit goods (18 U.S.C. § 2320(a)). This was substantially below his Guidelines range of 30-37 months. He has so far served about six months. His projected release date is March 9, 2022.

To prevail on this motion, defendant must demonstrate “extraordinary and compelling reasons” to reduce his sentence. See 18 U.S.C. § 3582(c)(1)(A)(i). Defendant contends that his medical conditions meet the required showing because they make him vulnerable to COVID-19. This is insufficient.

Defendant’s medical conditions are well under control. He is a 47-year old man with non-insulin dependent (type II) diabetes for which he takes oral medication. There is no indication of any diabetes-related health problems. He also has high blood pressure and hyperlipidemia, but the records indicate that their symptoms are controlled with medication. In addition, like many people over 40, he has high cholesterol for which he takes a statin. All these

conditions are asymptomatic and less severe than many others which the Bureau of Prisons treats on a regular basis.

The defendant's diabetes and hypertension increase his risk of contracting COVID-19. However, especially because the defendant is fully vaccinated against COVID-19, his underlying conditions do not amount to an extraordinary and compelling circumstance under the great weight of the caselaw. See United States v. Brown, No. 16-cr-436, 2021 WL 1154207, at *3-4 (S.D.N.Y. Mar. 26, 2021) (denying compassionate release and noting that because the defendant "will soon be fully vaccinated, any risk that he may become severely ill from COVID-19 will be reduced significantly"); United States v. Pabon, No. 17-cr-312, 2021 WL 603269, at *3 (S.D.N.Y. Feb. 16, 2021); United States v. Baeza-Vargas, --- F. Supp. 3d ----, 2021 WL 1250349, at *3 (D. Ariz. April 5, 2021) (collecting district-court cases representing a "growing consensus" that either receiving or refusing the COVID-19 vaccine "weighs against a finding of extraordinary and compelling circumstances" for purposes of § 3582(c)(1)(A)). Although he still may contract the virus, the odds of him requiring hospitalization for it or dying from it are extremely remote – as of October 18, 2021, only about .02% of the fully vaccinated in the United States suffer breakthrough cases resulting in hospitalization or death. See <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>.

Because defendant has failed to demonstrate extraordinary and compelling reasons for a reduction of his sentence, his motion is denied.

SO ORDERED.

Digitally signed by Brian
M. Cogan

U.S.D.J.

Dated: Brooklyn, New York
October 28, 2021